

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the Application of Michigan)	
Consolidated Gas Company for approval of)	
its Uncollectible Expense True-up Mechanism)	Case No. U-16257
computation and its report regarding its safety)	
and training-related expenditures for 2009.)	
_____)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on November 1, 2010.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before November 12, 2010, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before November 19, 2010. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing of exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for

Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

James N. Rigas
Administrative Law Judge

November 1, 2010
Lansing, Michigan
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FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

HISTORY OF PROCEEDINGS

On March 31, 2010, Michigan Consolidated Gas Company (Mich Con or the Company) filed an application with the Michigan Public Service Commission (Commission) for approval of its Uncollectible Expense True-up Mechanism (UETM) computation and its report regarding its safety and training-related expenditures for 2009. In support of its application, Mich Con filed the direct testimony and exhibits of Mr. Peter M. Ryneerson and Ms. Karen J. Hansard.

Pursuant to due notice a prehearing conference in this matter took place on May 10, 2010. At that time the Association of Businesses Advocating Tariff Equity (ABATE) was recognized as an Intervenor. The Commission Staff also entered its appearance and participated in the proceeding. A schedule was then established for the remainder of the proceeding.

On August 17, 2010, the schedule for the case was suspended so that the

parties would have the opportunity to pursue a possible settlement. A second prehearing conference was scheduled for October 4, 2010.

The hearing reconvened on October 4, 2010. Although a settlement was not achieved, the parties stipulated to bind in the testimony of Mich Con's two witnesses and waived their appearance and cross-examination.

Initial Briefs have been filed by Mich Con, ABATE and Staff. Reply Briefs have been filed by Mich Con and Staff.

STATEMENT OF FACTS

As noted above, Mich Con presented the testimony and exhibits of two witnesses, the first of which was Mr. Peter M. Ryneerson, Controller of Michigan Consolidated Gas Company. Mr. Ryneerson testified in support of Mich Con's UETM deficiency amount for the Company's 2009 UETM filing¹, Mich Con's undercollection of the 2007 UETM deficiency during 2009², and sponsored Mich Con's 2009 Annual Report on Safety and Training³.

Mich Con's second witness was Ms. Karen J. Hansard, a Regulatory Accounting Expert for Michigan Consolidated Gas Company. Ms. Hansard supported the reconciliation of the recoverable balance related to Mich Con's UETM for the 2007-2009 period, the related carrying charge provision and presented the proposed surcharges by rate schedule. Mich Con is seeking recovery of \$50.7 million related to the 2009 UETM

¹ Exhibit A-1 shows that during the 2009 calendar year Mich Con's actual uncollectible expenses totaled \$93.4 million, which is \$56.1 million over the amount in Mich Con's base rates. Mich Con calculated 90% of the difference between the actual uncollectible expenses for the 2009 and the amount in base rates to be \$50.5 million.

² Exhibit A-8 shows the calculation of the \$8.0 million 2007 UETM undercollection.

³ Exhibit A-4 presents Mich Con's 2009 Annual Report of Safety and Training. The report shows the comparison of actual Safety and Training Expenses of \$25.0 million to the \$24.7 million of expense embedded in Mich Con's base rates.

deficiency and \$8.0 million of the 2007 UETM undercollected in 2009 for a total of \$58.7 million.

Neither Staff nor ABATE presented any witnesses.

POSITIONS OF THE PARTIES

On April 28, 2005, the Commission approved implementation of the UETM to compensate for the unpredictability of Mich Con's uncollectible expenses. The Commission stated the UETM provides Mich Con with an opportunity to recover its uncollectible expense without risking a significant under- or overrecovery of the actual amount. The Commission set the annual uncollectible expense level at \$37.3 million and provided that by March 31 of each year Mich Con would file an application and compare Mich Con's actual uncollectible expense for the preceding calendar year with the base level of uncollectible expense in the Company's rates. Ninety percent of the difference between those amounts would be collected from, or refunded to, Mich Con's customers through a temporary surcharge or credit over the subsequent 12-month period.⁴ The remaining 10% would provide an incentive for Mich Con to do whatever it could to minimize its uncollectible expense.

The Commission also found it appropriate to include increased Safety and Training Expenses (S&TE) in the calculation of the 2005 test year revenue requirement. The Commission determined that those amounts not expended by the Company on S&TE would be refunded to ratepayers. The Commission directed that along with its March 31 UETM filing, Mich Con would file an annual report for the preceding year on

⁴ Case No. U-13898 Opinion and Order dated April 28, 2005, p.71.

the status of S&TE, as compared to the level of cost recovery provided for in the order. As part of the yearly UETM review, the Commission indicated it would review the company's S&TE filing. In the event the filing demonstrated that a refund is due to Mich Con's ratepayers, the Commission could order an appropriate refund at that time.⁵

Mich Con

Mich Con represents its testimony and exhibits show an accurate accounting of the Company's uncollectible expenses and the proper determination and allocation of the applicable surcharges by rate schedules. Mich Con maintains its unrebutted presentation is consistent with the Commission's required methodology and allocation. Mich Con therefore asks that the Commission approve the Company's application and proposed Tariff Sheet as set forth in Exhibit A-11.

In response to ABATE's position that the UETM is illegal because the Commission lacks the statutory authority to support the implementation of such a mechanism and its application violates the prohibition against retroactive ratemaking, Mich Con states the Michigan Court of Appeals has addressed and decided these very same legal questions. See *In re Michigan Consolidated Gas Company*, 281 Mich App 545; 761 NW 2d 482 (2008), *lv den*, 483 Mich 1017; 765 NW 2d 327 (2009)⁶. Mich Con states the Court of Appeals held that the UETM is lawful and within the scope of the Commission's statutory authority reasoning that "the [Commission] acted within its general ratemaking powers in adopting the UETM to ensure that the portion of rates attributable to uncollectible expense would substantially match actual uncollectible

⁵ *Id.* pp 75-76.

⁶ Mich Con notes the Michigan Supreme Court subsequently denied the Attorney General's leave to appeal the Court of Appeals' decision.

expense.” *Id.* at 549. The statutory basis for the Court of Appeals’ decision was that rates prescribed by the Commission are presumed to be lawful and reasonable under MCL 462.25.

With regard to ABATE’s argument that the UETM constitutes retroactive ratemaking, the Court of Appeals held that the UETM does not constitute an impermissible retroactive ratemaking mechanism. *Id.* at 549-550.

In as much as the Michigan Court of Appeals has determined as a matter of law that the Commission possessed the statutory authority to authorize Mich Con’s UETM and further determined as a matter of law that the Mich Con UETM does not constitute retroactive ratemaking, Mich Con asserts the Commission must therefore reject ABATE’s position.

Staff

Staff states it has reviewed Mich Con's application and supports the Company's UETM reconciliation for the 12-month period ended December 31, 2009. Staff agrees with Mich Con's calculation of an uncollectible surcharge recovery amount of \$58,665,150 as summarized on Exhibit A-1 and the surcharge rates detailed in Exhibit A-11. The Staff also supports Mich Con's determination that it incurred \$25 million in S&TE for 2009, which exceeds the \$24.7 million of safety and training expenses embedded in Mich Con's base tariff rates. As a result, Staff takes the position no refund is required.

Finally, Staff supports Mich Con’s position the UETM does not exceed the Commission’s authority to set just and reasonable rates and does not constitute retroactive ratemaking. Staff provides a reasoned analysis of the Commission’s

statutory authority and the 2008 Court of Appeals decision.⁷

ABATE

ABATE takes the position single expense item trackers such as the UETM are illegal because the Commission has no statutory authority to support the implementation of such a mechanism; and its application violates the prohibition against retroactive ratemaking. ABATE begins by arguing the Commission has no common law powers, has only statutory powers created by affirmative, clear and unmistakable statutory language and has no implied or inferred powers.⁸

ABATE states no specific statute confers authority upon the Commission to approve a single expense tracking mechanism. ABATE acknowledges the Legislature has acted when it intended to authorize the Commission to track and retroactively adjust certain revenues and expenses, but maintains that unless there is a specific statute conferring the authority to implement the tracking mechanisms contemplated by the Commission, the Commission simply is without that authority, and its decision to approve single expense item trackers must be reversed.

ABATE continues and states it is clear from the Commission's description of the operation of the UETM that it is designed to insure that the utility collects costs that the utility experienced during the "preceding calendar year" and to increase retail rates to compensate the utility for any increase over and above the amount established in base electric rates. It follows then, ABATE argues, the UETM violates the statutory mandate that the Commission approve "just and reasonable" rates. By definition, ABATE states,

⁷ See Staff's Reply Brief pp. 1-14.

⁸ *Huron Portland Cement Co. v PSC*, 351 Mich 255, 262; 88 NW2d 492 (1958); *Union Carbide Corp. v PSC*, 431 Mich 135, 151; 428 NW2d 322 (1998); *Consumers Power Co. v PSC*, 460 Mich 148, 155-156; 496 NW2d 126 (1999).

the base amount approved for uncollectible expense of \$37.3 million had to be just and reasonable at the time the Commission order was issued. Consequently, any subsequent adjustment to what once was just and reasonable for that particular period on a retroactive basis is a violation of the prohibition against retroactive ratemaking. ABATE concludes then the UETM falls squarely within prohibited retroactive ratemaking.⁹

ABATE asks that the Commission deny Mich Con's application for the reason Mich Con has failed to state a claim upon which relief may be granted.

DISCUSSION AND FINDINGS

The record shows that during the 2009 calendar year Mich Con's actual uncollectible expense totaled \$93.4 million, \$56.1 million above the amount included in the Company's base rates. Mich Con calculated 90% of the difference between the actual uncollectible expense for the 2009 and the amount in base rates to be \$50.5 million. (Exhibit A-1) Adding the applicable carrying costs and the undercollection of the 2007 UETM deficiency incurred during 2009 results in a surcharge recovery amount of \$58.7 million. (Exhibit A-1) In addition, the allocation factors used by Mich Con to determine its proposed surcharge were calculated consistent with the Commission's direction in Case No. U-13898. (Exhibit A-8) Mich Con's evidentiary presentation regarding the UETM is consistent with the Commission's required methodology and allocation requirements and has not been rebutted.

⁹ *Michigan Bell Tel Co v Pub Serv Comm*, 315 Mich 533; 24 NW2d 200 (1946); *General Tel Co of Michigan v Pub Serv Comm*, 341 Mich 620, 632; 67 NW2d 882 (1954); *Detroit Edison Co v Pub Serv Comm*, 416 Mich 510, 523; 331 NW2d 159 (1982).

Mich Con filed its S&TE report and supporting testimony indicating that it spent in excess of \$24.7 million in safety and training expenses during 2009. (Exhibit A-4) As a result of this over spend; no refund is warranted. This presentation was also not rebutted.

The parties do not dispute Mich Con's calculation of the UETM surcharge or its annual report on the status of safety and training-related expenditures. The Administrative Law Judge therefore recommends that the Commission approve Mich Con's application and proposed tariff sheet and accept Mich Con's annual report regarding its expenditures for safety and training-related expenditures.

ABATE has argued that the Commission has no statutory authority to approve the UETM and the UETM violates the rule prohibiting retroactive ratemaking. These same arguments were raised in prior UETM proceedings, including Mich Con's 2007 UETM proceeding. The Commission, in its December 23, 2008 Order, rejected both of these assertions citing the 2008 Court of Appeals decision relied on by both Mich Con and Staff. After reviewing the presentations of the parties in this proceeding the Administrative Law Judge finds the issues raised by ABATE are settled law and accordingly recommends that the Commission reject ABATE's position.

CONCLUSION

Based upon the foregoing discussion and findings, the Administrative Law Judge recommends that the Commission approve Michigan Consolidated Gas Company's application for authority to establish the Uncollectible Expense True-up Mechanism

surcharges. The Administrative Law Judge also recommends that the Commission accept the 2009 safety and training-related expenditures report.

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For the Michigan Public Service Commission

James N. Rigas
Administrative Law Judge

Issued and Served: November 1, 2010